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Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Security Council
Sixty-first year

Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly and the members of the Security Council the thirteenth annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, submitted by the President of the International Tribunal in accordance with article 34 of the statute of the Tribunal (see S/25704 and Corr.1, annex), which states that:

> "The President of the International Tribunal shall submit an annual report of the International Tribunal to the Security Council and to the General Assembly".

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Letter of transmittal

15 August 2006

Excellencies,

I have the honour to submit the thirteenth annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 dated 15 August 2006 to the General Assembly and the Security Council, pursuant to article 34 of the statute of the International Tribunal.

Please accept, Excellencies, the assurances of my highest consideration.

(*Signed*) Fausto **Pocar**
President

President of the General Assembly
United Nations
New York, NY 10017

President of the Security Council
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Thirteenth annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Summary

The thirteenth annual report of the International Criminal Tribunal for the Former Yugoslavia covers the period from 1 August 2005 to 31 July 2006.

During the reporting period, a number of concrete measures were adopted to increase the efficiency and efficacy of the Tribunal's proceedings. The three Trial Chambers ran six trials simultaneously and three trials of multi-accused, involving 21 accused, commenced much earlier than anticipated. The Appeals Chamber expedited its proceedings with the adoption of recommended rule amendments put forward by the working group on speeding up appeals. The work of the Trial Chambers likewise benefited from the recommendations of the working group on speeding up trials, which advocated a fundamental shift in the way the Tribunal conducts its trials within the existing rules.

The Tribunal continued to focus on the most senior-level persons accused of the most serious crimes and, during the reporting period, the cases of nine lower to mid-level accused were transferred to national jurisdictions pursuant to rule 11 bis.

The Tribunal also continued its work on external reforms by hosting an increased number of working visits to the Tribunal and by offering more training programmes to courts in the region in the interests of furthering the development of the rule of law in the former Yugoslavia as a key component of the Tribunal's legacy. The judges of the Tribunal have increased their involvement with the local judiciaries and built relationships of mutual cooperation.

Currently, the Tribunal has 28 judges from 26 countries. Following the adoption by the Security Council of resolution 1660 (2006) on 28 February 2006, the Tribunal's assignment of serving ad litem judges has increased from a maximum of 9 to 12. This is to allow reserve ad litem judges to be assigned to multi-accused trials to prevent the possibility of delay caused by a trial having to be restarted should more than one of the judges be unable to complete the trial.

There were no new indictments issued by the Prosecutor during the reporting period, except for those for contempt of the Tribunal. The Prosecutor has continued to focus her efforts on securing the arrest of the remaining six fugitives. The failure to arrest Radovan Karadžić and Ratko Mladić remains of grave concern to the proper administration of justice.

The Office of the Prosecutor has strengthened its relations with prosecutors and courts in the region and with the Governments of the States of the former Yugoslavia. The Prosecutor is satisfied with the cooperation of some of those Governments but has been especially disappointed with the failure by Serbia and the Republika Srpska to trace and arrest outstanding fugitives.

The Registry continued to play a crucial role in the provision of administrative and judicial support to the Tribunal. During the reporting period, the Registrar successfully obtained 10 more relocation of witnesses and enforcement of sentences

agreements. In addition, the three courtrooms of the Tribunal and support facilities were remodelled so as to allow 18 accused to be tried simultaneously.

The Registry was also instrumental in ensuring the smooth transfer of rule 11 bis cases.

The Outreach Programme of the Registry carried out a diverse range of activities in the region aimed at increasing the profile of the Tribunal and bringing its judgements to the relevant communities. The Court Management and Support Services section supported 10 trials during the reporting period and maintained all relevant documentation. The Victim and Witnesses Section assisted 321 witnesses and accompanying persons in The Hague and continued its work in the relocation of protected witnesses.

The Detention Unit was the subject of an independent audit by representatives of the Government of Sweden, following the deaths in custody of Milan Babić and Slobodan Milošević. The audit was generally positive, but recommendations made for improvement in certain areas are being implemented by a working group.

The Office of Legal Aid continued to support the assignment of defence counsel to accused at the Tribunal. Recently, it developed an information technologies network to allow counsel access to the Tribunal's database from any location.

By its resolution 60/243, the General Assembly determined to appropriate to the Special Account for the Tribunal a total amount of $305,137,300 gross for the biennium 2006-2007. The appropriation reflects a nominal reduction of 7 per cent as compared with 2004-2005.

During the reporting period, 73 Professional staff and 103 General Service staff were recruited. The Tribunal currently has staff from 80 countries. The Tribunal is presently looking at methods to ensure the retention of its highly qualified staff.

To date, the Tribunal has concluded proceedings against 94 accused out of the 161 who have been charged. The report that follows details the activities of the Tribunal during the reporting period and illustrates the Tribunal's complete commitment to meeting the completion strategy targets while ensuring that due process is realized.

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I. Introduction

1. The thirteenth annual report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia outlines the activities of the Tribunal for the period from 1 August 2005 to 31 July 2006.

2. Judge Fausto Pocar (Italy) was elected as President of the Tribunal on 17 November 2005, replacing Judge Theodor Meron (United States of America). Judge Kevin Parker (Australia) was elected Vice-President at the same time, replacing Judge Fausto Pocar (Italy).

3. During the reporting period, the Tribunal continued to focus on the implementation of its completion strategy endorsed by the Security Council in resolution 1503 (2003).

4. The Tribunal's three Trial Chambers operated at maximum capacity, running six trials simultaneously. Three trials of multi-accused, involving 21 accused, were commenced in April and July 2006, several months earlier than originally planned. The Trial Chambers rendered 447 decisions on pretrial matters involving 22 cases, heard two cases of contempt and rendered four judgements on the merits. Also, five 11 bis referral decisions, involving the transfer of nine accused to national jurisdictions, were reached. Likewise, the Appeals Chamber expedited its work, issuing 150 decisions, comprising 112 pre-appeal decisions and orders, 32 decisions on interlocutory appeals, four referral decisions and four judgements. In addition, one reconsideration decision was rendered.

5. The Tribunal continued to develop the judicial capacity of national authorities in the former Yugoslavia and strengthened its outreach activities as a key component of its legacy.

II. Activities involving the entire Tribunal

A. President

6. President Fausto Pocar pushed forward numerous reforms and initiated creative solutions for meeting the targets of the completion strategy during the reporting period. He also followed up on activity begun during the former presidency of Judge Theodor Meron.

1. Reforms

(a) Internal reforms

7. In September and November 2005, judges of the Tribunal unanimously adopted the recommended amendments of the working group on speeding up appeals to the Rules of Procedure and Evidence ("Rules"). These are detailed in full in the Tribunal's fourth completion strategy report to the Security Council (S/2005/781). They have resulted in shortening the time for the filing of appeals, avoiding repetitious filings, and expediting disposal of appeals.

8. In April 2006, the judges of the Tribunal adopted the final proposals of the working group on speeding up trials detailed in the Tribunal's fifth completion strategy report to the Security Council (S/2006/353). The working group's report centred on judges taking a more proactive approach to the conduct of trials. Pretrial judges are managing cases to ensure that they are trial-ready upon the vacancy of a courtroom. Pretrial judges are taking the central role in the conduct of rule 65 ter conferences for establishing workplans and setting strict timetables on disclosure of material and reaching agreement upon facts. To enforce timely fulfilment of disclosure obligations, pretrial judges are making greater use of the sanctions under rule 68 bis. Pretrial judges are also ordering the Prosecution to provide greater specification of its trial strategy in order to avoid delay caused by changes to its mid-trial. For purposes of streamlining trials, pretrial judges are imposing strict deadlines on the parties for the filing of information regarding their cases, including their pretrial briefs, pursuant to rule 65 ter (E).

9. In addition, pretrial judges are taking more decisions on the admissibility of adjudicated facts and documentary evidence from other proceedings under rule 94 (B). To encourage this, a new policy has been implemented by which a case is transferred as soon as possible to the Trial Chamber that will actually hold the trial allowing for the pretrial judge to sit on the trial.

10. Trial Chambers are also proactively expediting trials. Notably, Trial Chambers are using rule 73 bis to oblige the Prosecution to focus its cases. Rule 73 bis allows the Trial Chamber at the pretrial conference to order the Prosecution to limit the presentation of its evidence and to fix the number of crime sites or incidents contained in one or more of the charges. Calls for cooperation from the Prosecution to reduce its lengthy cases have been less than satisfactory. Aware that the length of trials begins with the breadth of the Prosecution's indictments, the judges adopted an amendment to rule 73 bis to allow a Trial Chamber to invite and/or direct the prosecution to select those counts in the indictment on which to proceed. This amendment is necessary to ensure respect for an accused's right to a fair and expeditious trial and to prevent unduly lengthy periods of pretrial detention. The Prosecutor strongly opposed this amendment, even though focusing indictments is part of the trial management commonly used in national jurisdictions and does not impact on prosecutorial prerogatives.

11. In the reporting period, the Tribunal proceeded with the joinder of cases with the same crime base. In April and July 2006, three trials, involving a total of 21 accused and consolidating 14 cases, began. The commencement of these trials was greatly accelerated by the implementation of the reforms recommended by the working group on speeding up trials.

12. In addition, the Tribunal referred its first cases against low to mid-level accused to national jurisdictions pursuant to rule 11 bis. The cases of nine accused have been transferred following referral under Rule 11 bis: seven accused have been transferred to Bosnia and Herzegovina and two to Croatia.

13. Following a successful pilot run of the e-Court system last year, which integrates all documents into a central electronic database, the system was applied to all trials at the Tribunal in the reporting period.

(b) External reforms

14. In the reporting period, the Tribunal increased its involvement in working visits and training programmes to enhance the judicial capacity of national courts and the profile of the Tribunal's work. These are summarized in more detail in the Tribunal's fourth and fifth completion strategy reports.

2. Diplomatic relations and other representation

15. In November 2005, former President Meron met with the Prime Minister of Serbia, Vojislaw Kostunica, in Serbia, with the aim of improving Serbia's cooperation with the Tribunal. President Pocar met on several occasions with the President of the Court of Sarajevo, Medzida Kreso, and with judges of the Special War Crimes Chamber in Bosnia and Herzegovina and of the Belgrade District Court. On 31 March, President Pocar travelled to Brussels to take part in a donor's conference on the funding needs of the State Justice Sector Institutions of Bosnia and Herzegovina and urged the international community to continue to support the judicial institutions of Bosnia and Herzegovina. In May 2006, President Pocar travelled to Sarajevo to continue the Tribunal's dialogue with the judges of the Special War Crimes Chamber and for follow-up to the donor's conference held in Brussels. During that visit, President Pocar held meetings with the Chairman of the Presidency of Bosnia and Herzegovina, Sulejman Tihić; the High Representative, Christian Schwarz-Schilling; the Minister of Justice, Slobodan Kovać; and the Chairman of the Council of Ministers of Bosnia and Herzegovina, Adnan Terzić. Various other meetings between President Pocar and government representatives from the region were held at the Tribunal.

16. On 17 March 2006, President Pocar convened a diplomatic seminar at the Tribunal, which was attended by over 80 representatives from the diplomatic missions to The Netherlands, to inform them of the circumstances known at the time surrounding the death of Slobodan Milošević in the Detention Unit. Following the seminar, the President and the Registrar held a press conference to inform the media of the circumstances surrounding the death.

17. On 7 April 2006, a further diplomatic conference was held at the Tribunal during which the President, Prosecutor and Registrar updated over 80 members of the diplomatic corps on the Tribunal's implementation of its completion strategy. President Pocar also informed them of the results of the Dutch inquest into the death of Slobodan Milošević and the progress of the internal inquiry ordered by the President on 11 March 2006 and headed by Judge Parker. He also advised of the progress of the conduct of an independent audit by the Government of Sweden of the Detention Unit, as requested by the Registrar under the authority of the President.

18. Former President Meron addressed the General Assembly on 10 October 2005 in order to present the annual report of the Tribunal covering the period from 1 August 2004 to 31 July 2005. On 30 November 2005, President Pocar submitted the Tribunal's fourth completion strategy report pursuant to Security Council resolution 1534 (2004). On 15 December, the President and the Prosecutor addressed the Security Council on that report. On 31 March 2006, the President addressed the Security Council via video link from The Hague on the deaths in the Detention Unit of Milan Babić and Slobodan Milošević. On 29 May 2006, President Pocar submitted the fifth completion strategy report and on 7 June, the President and

the Prosecutor reported to the Security Council on the progress of the completion strategy. The President also updated the Security Council on the findings of the Tribunal's internal inquiry into the death of Slobodan Milošević following the issuing of Judge Parker's report on 30 May, and on the Government of Sweden's independent audit of the Detention Unit, also issued in May. On 8 June, Judge Parker's report on the internal inquiry into the death of Milan Babić was completed and was immediately transmitted by the President to the members of the Security Council and the diplomatic community.

3. Judicial activity

19. By virtue of the powers vested in him by the statute, the rules and the practice directions of the Tribunal, the President issued numerous orders in 2005, such as those assigning cases to Chambers and appointing pre-appeal judges. Following the termination of the Milošević proceedings in March 2006, the President reorganized the Trial Chambers to fully engage the judges of that Chamber as soon as possible and to allow for the three trials of multi-accused to start much earlier.

20. In addition, the President initiated the adoption of resolution 1660 (2006) by the Security Council on 28 February 2006, allowing the Secretary-General to appoint ad litem reserve judges to trials of multi-accused. These judges will be able to replace a judge who is no longer able to sit on a bench and prevent delay caused by having to restart the trial.

21. President Pocar also disposed of numerous requests for review of the decisions of the Registrar in relation to the assignment or removal of defence counsel, communication bans and conditions of detention. He issued orders designating the State in which Zoran Žigić, Dario Kordić, Miodrag Jokić, and Dragan Nikolić are to serve their sentences. He also granted requests for early release to Esad Landžo, Drazen Erdemović, Drago Josipović, and Amir Kubura. The President rejected an application made by Predrag Banović.

B. Bureau

22. Pursuant to rule 23, the Bureau is composed of the President, the Vice-President and the presiding judges of the three Trial Chambers. The President consults the Bureau on all major questions relating to the functioning of the Tribunal.

23. During the reporting period, the Bureau met to discuss numerous issues regarding the proper administration of the Tribunal and the Detention Unit. For example, the Bureau endorsed a new policy aimed at better managing requests for the translation of documents and considered the conditions of detention following the issuing of the Government of Sweden's independent audit of the Detention Unit.

C. Coordination Council

24. Pursuant to rule 23 bis, the Coordination Council consists of the President, the Prosecutor and the Registrar. During the reporting period, the Council met in September and November 2005, and in February, March and May 2006. The Council addressed organization-wide efforts to meet the completion strategy,

efficiency within the court system, the Prosecutor's lengthy and complex indictments, the deaths in custody of Slobodan Milošević and Milan Babić and coordination of mandated reports and visits to the General Assembly and Security Council.

D. Plenary sessions

25. During the reporting period, the judges held four extraordinary plenary sessions and one regular plenary session.

26. At the extraordinary plenary session of 17 November 2005, elections were held for the presidency of the Tribunal. At the December extraordinary plenary session, the judges authorized the President's proposal to the Security Council for the appointment of reserve judges to multi-accused trials. Further extraordinary plenary sessions were held in March and May 2006, for the purpose of discussing specific rules proposals.

27. A regular plenary session was held in June 2006. The judges discussed numerous issues concerning the work of the Tribunal and took a decision to convene a further extraordinary plenary session in September 2006 to discuss ways in which to expedite trial proceedings and to consider various rule amendments aimed at expediting trials without sacrificing due process. The judges also took a decision to bring to the attention of the General Assembly the disparity between their pension entitlements and those of the judges of the International Court of Justice. The disparity contravenes article 13 of the statute of the Tribunal, which provides that terms and conditions of the judges of the Tribunal should be the same as those applicable to the judges of the International Court of Justice.

E. Rules Committee

28. The judicial membership of the Rules Committee changed during the reporting period. It currently comprises Judge Agius (Chair), President Pocar, Vice-President Parker and Judges Orie and Kwon.

29. The non-voting members of the Rules Committee are two representatives each from the Office of the Prosecutor, the Registry and the Association of Defence Counsel.

30. Amendments to the Rules of Procedure and Evidence adopted by the judges in plenary sessions during the reporting period are found in Tribunal documents IT/241, IT/244 and IT/247.

III. Activity of the Chambers

A. Composition of the Chambers

31. The Tribunal has 28 judges from 26 countries. The Chambers are composed of 16 permanent judges, including 2 judges of the International Criminal Tribunal for Rwanda serving in the Tribunal's Appeal Chamber and 12 ad litem Judges.

32. The 14 permanent judges are Fausto Pocar (President, Italy), Kevin Parker (Vice-President, Australia), Patrick Lipton Robinson (Presiding Judge, Jamaica), Carmel A. Agius (Presiding Judge, Malta), Alphonsus Martinus Maria Orie (Presiding Judge, Netherlands), Mohamed Shahabuddeen (Guyana), Liu Daqun (China), Theodor Meron (United States of America), Wolfgang Schomburg (Germany), O-gon Kwon (Republic of Korea), Jean-Claude Antonetti (France) and Iain Bonomy (United Kingdom of Great Britain and Northern Ireland). Judge Amin El Mahdi (Egypt) was not re-elected as a permanent judge to the Tribunal and Judge Florence Ndepele Mwachande Mumba (Zambia) did not stand for re-election; they were replaced in November 2005 with Judge Christine Van Den Wyngaert (Belgium), previously serving as ad litem judge, and Judge Bakone Justice Moloto (South Africa). The two appeals judges from the International Criminal Tribunal for Rwanda are Judge Mehmet Güney (Turkey) and Judge Andrésia Vaz (Senegal). Judge Vaz was assigned on 15 July 2005, by order of President Eric Møse of the Tribunal for Rwanda, to replace Judge Inés Mónica Weinberg de Roca (Argentina). The replacement took effect on 15 August 2005.

33. The ad litem judges during the reporting period have been Joaquín Martín Canivell (Spain), Vonimbolana Rasoazanany (Madagascar), Bert Swart (Netherlands), Krister Thelin (Sweden), Christine Van Den Wyngaert (Belgium), Hans Henrik Brydensholt (Denmark), Albin Eser (Germany), Claude Hanoteau (France), Janet Nosworthy (Jamaica), Frank Höpfel (Austria), Stefan Trechsel (Switzerland), Árpád Prandler (Hungary), Antoine Kesia-Mbe Mindua (Democratic Republic of the Congo), Ali Nawaz Chowhan (Pakistan), Tsvetana Kamenova (Bulgaria), Kimberly Prost (Canada) and judge Ole Bjorn Støle (Norway).

34. At the beginning of the reporting period, Trial Chamber I was composed of three permanent judges, Judges Liu (presiding), El Mahdi and Orie, and two ad litem judges, Judges Canivell and Hanoteau. Judge Van Den Wyngaert replaced Judge El Mahdi upon her election as a permanent judge of the Tribunal and Judge Moloto replaced Judge Liu upon his assignment to the Appeals Chamber, following the departure of Judge Mumba in November 2005. Judge Orie was appointed presiding judge of Trial Chamber I.

35. Trial Chamber II was previously composed of three permanent judges, Judges Agius (presiding), Antonetti and Parker. Ten ad litem judges have been assigned to cases in the Chamber in the reporting period: Judges Rasoazanany, Swart, Thelin, Van Den Wyngaert, Brydensholt, Eser, Trechsel and Prandler, and Mindua and Støle, who are assigned as reserve ad litem judges. The Chamber initially consisted of three sections and currently consists of two: section 1 of Trial Chamber II is composed of Judge Agius (presiding), sitting first with Judges Brydensholt and Eser and currently with Judges Kwon, Prost and Støle; section 2 was composed of Judge Antonetti (presiding), sitting with Judges Rasoazanany and Swart; and section 3 is composed of Judge Parker (presiding), sitting with Judges Thelin and Van Den Wyngaert who, following her election, currently serves as a permanent judge of Trial Chamber I. Judge Antonetti was assigned as a permanent judge to Trial Chamber III in May 2006 and was replaced by Judge Kwon from Trial Chamber III to accommodate trial management needs.

36. Trial Chamber III was initially composed of three permanent judges, Judges Robinson (presiding), Kwon and Bonomy. Following the termination of the Milošević trial, Judge Kwon joined Trial Chamber II and was replaced by Judge

Antonetti. The Trial Chamber is divided into three sections: Judge Antonetti sits with ad litem Judges Trechsel, Prandler and Mindua, who is assigned as a reserve judge, and Judge Bonomy sits with ad litem Judges Chowhan, Kamenova and Nosworthy, who also sits as a reserve ad litem judge. Judge Robinson currently sits with ad litem Judges Höpfel and Thelin for the purposes of pretrial work.

37. Lastly, the Appeals Chamber is currently composed of Judges Pocar (presiding), Shahabuddeen, Güney, Liu, Vaz, Meron and Schomburg.

B. Principal activity of the Trial Chambers

1. Trial Chamber I

(a) Pretrial

Šešelj-case

38. Vojislav Šešelj is charged with 14 counts alleging crimes against humanity and violations of the laws or customs of war in the territory of Croatia, in large parts of Bosnia and Herzegovina and in Vojvodina (Serbia), from August 1991 until September 1993. The Trial Chamber is composed of Judges Orie (pretrial judge), Robinson and Moloto. Trial is expected to commence in October 2006.

Milošević

39. Dragomir Milošević is charged with seven counts alleging crimes against humanity and violations of the laws or customs of war resulting from a campaign of shelling and sniping upon civilian areas of Sarajevo, from August 1994 until November 1995. The Trial Chamber is composed of Judges Orie (presiding), Moloto (pretrial judge) and Van Den Wyngaert. Trial is expected to commence towards the end of 2006.

(b) Trial

Krajišnik

40. Momčilo Krajišnik is charged with eight counts alleging genocide, crimes against humanity, and violations of the laws or customs of war in more than 30 municipalities in Bosnia and Herzegovina, during 1991 and 1992. The Trial Chamber is composed of Judges Orie (presiding), Canivell and Hanoteau. Trial commenced on 3 February 2004 and the judgement is expected to be pronounced in September 2006.

Martić

41. Milan Martić is charged with 19 counts alleging crimes against humanity and violations of the laws or customs of war against Croat civilians committed by military and police organizations in the SAO Krajina (later Republic of Serbian Krajina), between 1991 and 1995. The Trial Chamber is composed of Judges Moloto, (presiding), Nosworthy and Höpfel. Trial commenced on 13 December 2005 and is expected to conclude towards the end of 2006.

Rajić

42. Ivica Rajić pled guilty on 26 October 2005 to four counts of wilful killing, inhuman treatment, extensive destruction and appropriation of property in the area of Stupni Do in central Bosnia in 1993. The Trial Chamber was composed of Judges Van Den Wyngaert (presiding), Nosworthy and Höpfel. Judgement was delivered on 8 May 2006. The accused was sentenced to 12 years' imprisonment.

Halilović

43. Sefer Halilović was charged with one count of murder for the killing of Bosnian Croat civilians committed by subordinate brigades in Grabovica and Uzdol, Bosnia and Herzegovina, in September 1993. The Trial Chamber was composed of Judges Liu (presiding), Mumba and El Mahdi (Judge György Szénasi of Hungary was assigned initially to the case but was replaced by Judge Mumba upon his resignation for health reasons on 30 May 2005). Judgement was delivered on 16 November 2005 and the accused was found not guilty.

2. Trial Chamber II

(a) Pretrial

Boškoski and Tarčulovski

44. Ljube Boškoski and Johan Tarčulovski are charged with three counts of violations of the laws or customs of war allegedly committed in August 2001 in the former Yugoslav Republic of Macedonia. The Trial Chamber has issued 35 pretrial decisions.

Čermak, Markač and Gotovina

45. Ivan Čermak and Mladen Markač are charged with five counts of crimes against humanity and four counts of violations of the laws or customs of war allegedly committed in the course of and after Operation Storm, between August and November 1995, in the Krajina region of Croatia. Ante Gotovina is charged with four counts of crimes against humanity and three counts of violations of the laws or customs of war allegedly committed between August and November 1995 in the Krajina region of Croatia. The Trial Chamber has issued 22 pretrial decisions.

Mićo Stanišić

46. Mićo Stanišić is charged with seven counts of crimes against humanity and three counts of violations of the laws or customs of war allegedly committed in the period from 1 April to 31 December 1992 in Bosnia and Herzegovina. The Trial Chamber has issued nine pretrial decisions.

Haradinaj, Balaj and Brahimaj

47. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj are charged with 37 counts of crimes against humanity and violations of the laws or customs of war relating to events alleged to have taken place in 1998 in Kosovo. The Trial Chamber has issued 31 pretrial decisions.

Trbić

48. Milorad Trbić is charged with genocide and conspiracy to commit genocide, as well as five counts of crimes against humanity and one count of violation of the laws or customs of war.

(b) Trial

Limaj, Bala and Musliu

49. In the trial against Fatmir Limaj, Haradin Bala and Isak Musliu, the Trial Chamber composed of Judges Parker (presiding), Thelin and Van Den Wyngaert, delivered judgement on 30 November 2005. Limaj and Musliu were acquitted. Bala was found guilty on three counts of violations of the laws or customs of war, for torture, cruel treatment and murder committed between May and July 1998 in a Kosovo Liberation Army prison camp in the village of Llapushnik in central Kosovo and in the nearby Berisha Mountains. He was sentenced to 13 years' imprisonment.

Hadžihasanović and Kubura

50. In the trial against Enver Hadžihasanović and Amir Kubura, the Trial Chamber, composed of Judges Antonetti (presiding), Rasoazanany and Swart, delivered judgement on 15 March 2006. Both accused were found guilty for having failed to take necessary and reasonable measures to prevent the commission of crimes by their subordinates. Hadžihasanović was sentenced to five years' and Kubura to 2 ½ years' imprisonment.

Orić

51. In the trial against Naser Orić, the Trial Chamber, composed of Judges Agius (presiding), Brydensholt and Eser, delivered judgement on 30 June 2006. The accused was found guilty for having failed to take necessary and reasonable measures to prevent the commission of crimes by his subordinates in and around the Srebrenica area of Bosnia and Herzegovina in the course of 1992 and 1993. He was sentenced to two years' imprisonment.

Mrkšić, Radić and Šljivančanin

52. The trial against Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin commenced on 10 October 2005 before the Trial Chamber, composed of Judges Parker (presiding), Van Den Wyngaert and Thelin. The three accused are charged with five counts of crimes against humanity and four counts of violations of the laws or customs of war in relation to the mass killings in the Vukovar Hospital in November 1991.

Popović et al.

53. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Vinko Pandurević, and Zdravko Tolimir are charged with genocide and conspiracy to commit genocide, as well as five counts of crimes against humanity and one count of violation of the laws or customs of war. Radivoje Miletić and Milan Gvero are charged with four counts of crime against humanity and one count of violation of

the laws or customs of war. The Trial Chamber has issued 48 decisions.[1] The trial commenced on 14 July 2006. The case is presided over by Judge Agius, sitting with Judges Kwon, Prost and Støle.

3. Trial Chamber III

(a) Pretrial

54. Throughout the reporting period, the Trial Chamber issued numerous orders and decisions in the various pretrial cases before it. These cases included that against Milan Milutinović and others, Rasim Delić, Franko Simatović and Jovica Stanišić, Momčilo Perišić, Milan and Sredoje Lukić, Željko Mejaki and others.

(b) Trial

Milošević

55. Slobodan Milošević was charged with individual criminal responsibility, including superior responsibility, for 66 counts of grave breaches of the 1949 Geneva Conventions, violations of the laws or customs of war, genocide or complicity in genocide and crimes against humanity, committed in Croatia between August 1991 and June 1992, Bosnia and Herzegovina between 1992 and 1995, and Kosovo between January 1999 and June 1999. The trial commenced on 12 February 2002. The prosecution rested its case on 25 February 2004; the defence case began on 31 August 2004 and ended prematurely with Milošević's death in the Detention Unit on 11 March 2006.

Prlić et al.

56. The trial of Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić, charged with 26 counts of grave breaches of the 1949 Geneva Conventions, violations of the laws or customs of war and crimes against humanity, allegedly committed in several municipalities of central and south-western Bosnia and Herzegovina in the period from 1992-1994, commenced on 26 April 2006. The presiding judge is Judge Antonetti, sitting with Judge Prandler, Judge Trechsel and reserve Judge Mindua.

Milutinović et al.

57. The multi-accused trial of Milutinović et al. commenced on 10 July 2006, before Judges Bonomy (presiding) Chowhan, Kamenova and reserve Judge Nosworthy. The indictment against Milutinović et al. charges the accused with five counts of violations of the laws or customs of war and crimes against humanity for a campaign of ethnic cleansing allegedly carried out by Federal Republic of Yugoslavia and Serbian forces in Kosovo in 1999.

Marijačić and Rebić

58. In its judgement of 10 March 2006, the Trial Chamber found Ivica Marijačić and Markica Rebić guilty of contempt of the Tribunal for disclosing information

[1] These accused were joined on 22 September 2005 and the decisions issued in the separate cases have been added together here. The case of Milorad Trbić was severed on 26 June 2006.

about a protected Tribunal witness in a Croatian newspaper, in violation of a closed session order.

Jović

59. The trial of Josip Jović, a Croatian journalist charged with contempt of the Tribunal for disclosing information about a protected witness, was held on 11 July 2006. The judgement in the case is expected to be rendered following the recess in the second quarter of 2006.

Bralo

60. In October 2005, the Trial Chamber held a sentencing hearing in the case of Miroslav Bralo, who pled guilty to charges including persecutions, murder and torture, for his role in an attack on the village of Ahmići in Bosnia and Herzegovina in 1993. The Chamber issued its sentencing judgement on 7 December 2005 and sentenced him to 20 years' imprisonment.

4. Referral Bench

Accused referred to the authorities of a State

61. The Referral Bench is composed of Judges Orie (presiding), Parker and Kwon. The cases of nine accused have been referred under rule 11 bis: Radovan Stanković (to Bosnia and Herzegovina on 29 September 2005) and Gojko Janković (to Bosnia and Herzegovina on 8 December 2005); Rahim Ademi and Mirko Norac (to Croatia on 1 November 2005); Željko Mejakić, Momčilo Gruban, Dušan Fuštar and Duško Knežević (to Bosnia and Herzegovina on 9 May 2006); and Paško Ljubičić (transfer to Bosnia and Herzegovina is imminent).

Cases before the Referral Bench

62. The cases of five accused are currently before the Referral Bench: Vladimir Kovačević; Milan Lukić; Sredoje Lukić; Dragan Zelenović and Milorad Trbić.

C. Appeals Chamber

1. Interlocutory appeals

63. Thirty-two decisions on interlocutory appeals were issued in the following cases: Boskoski and Tarčulovski (2); Delić (1); Halilović (1); Haradinaj and Brahimaj (2); Janković (1); Jović (1); Krajišnik (1); Krizić (1); Mejakić (1); Milutinović et al. (3); Milošević (2); Pandurević and Trbić (2); Petković (1); Popović (1); Popović et al. (2); Prlić et al. (1); Šešelj (1); Stanisić (1); Todović (1); Tolimir et al. (2). There were also three (3) confidential decisions on interlocutory appeals. Four interlocutory appeals are pending in the Boskoski and Tarčulovski, Krajisnik, Martić, and Prlić et al. cases.

2. Contempt appeals

64. On 29 August 2005, the Appeals Chamber dismissed the appeal filed by Kosta Bulatović on 27 May 2005 in the Milošević case, affirming his conviction for contempt. A new contempt appeal filed on 20 March 2006 by Ivica Marijačić and Markica Rebić against the judgement rendered against them is pending.

3. Referral appeals

65. On 1 September 2005, 15 November 2005, 7 April 2006 and 4 July 2006, respectively, the Appeals Chamber disposed of four appeals in Stanković, Mejakić et al., Janković and Ljubičić, referring these cases to the authorities of the State of Bosnia and Herzegovina pursuant to rule 11 bis of the rules. A fifth referral appeal is pending in the Todović and Rašević case for referral to Bosnia and Herzegovina, following the issuance by the Referral Bench on 31 May 2006 of a new decision with respect to Savo Todović.

4. Requests for review and/or reconsideration

66. Three requests for review are pending. In the Blaškić case, on 29 July 2005, the Prosecution filed confidentially a request for review and reconsideration of the Appeals Chamber's judgement of 29 July 2004 (a public redacted version was filed on 10 July 2006). In the Kvočka et al. case, requests for review of the Appeals Chamber's judgement of 28 February 2005 have been filed respectively by Mlado Radić on 27 February 2006 and by Zoran Zigić on 14 June 2006. Also in the Kvočka et al. case, a request for reconsideration filed by Zoran Zigić on 7 December 2005 was dismissed on 26 June 2006.

5. Appeals on the merits

67. The Appeals Chamber rendered four final judgements: on 30 August 2005, it dismissed the sentencing appeal filed by Miodrag Jokić; on 8 March 2006, it allowed Momir Nikolić's sentencing appeal in part and revised the sentence to 20 years' imprisonment; on 22 March 2006, it allowed in part both the prosecution's appeal and Milomir Stakić's appeal and imposed a global sentence of 40 years' imprisonment; and on 3 May 2006, it allowed in part the prosecution's appeal, as well as Mladen Naletilić's and Vinko Martinović's appeals, and affirmed their respective sentences of 20 years' and 18 years' of imprisonment.

68. During the reporting period, four new appeals from judgement were filed before the Appeals Chamber in the Halilović, Limaj et al, Bralo and Hadžihasanović and Kubura cases. Nine appeals were pending from the previous reporting period. The Appeals Chamber held hearings in the Simić case and is currently deliberating. Pre-appeal activity is ongoing in the Blagojević and Jokić, Bralo, Brđanin, Galić, Halilović, Hadžihasanović and Kubura, Limaj et al. and Strugar cases. A total of 112 pre-appeal decisions and orders have been issued and the Blagojević and Jokić, Bralo, Brđanin and Galić cases are being prepared for hearings in the second half of 2006.

IV. Activity of the Office of the Prosecutor

A. Overview

69. A significant increase in the pretrial, trial and appellate work outputs, the termination of the *Milošević* trial due to the death of the accused and the successful operation to arrest Ante Gotovina marked the reporting period. There were no new indictments (except for contempt of court) issued, in accordance with the completion strategy of the Tribunal. The Prosecutor focused her efforts on doing everything possible to bring the remaining accused at large to the Tribunal. Efforts were made to obtain full cooperation of relevant countries, resulting in several arrests and better production of documents. The Office of the Prosecutor continued to provide assistance in furthering the reform of the judicial systems of the countries of the former Yugoslavia.

70. The Office of the Prosecutor also continued its activity regarding the transfer of cases under rule 11 bis to national courts and cooperated with the national prosecutorial authorities on non-referred war crimes cases. Altogether, 13 motions for the transfer of 21 accused were filed.

B. Investigations

71. Josip Jović and Marijan Križić were indicted on 29 August 2005 for contempt of court (publication of the protected witness testimony in violation of the court orders) similar to charges brought against four others in April 2005. New contempt proceedings remain possible until the end of the mandate of the Tribunal.

C. Arrest and surrender of accused

72. In August 2005, two accused were located and arrested: Milan Lukić, in Argentina, and Dragan Zelenović, in Russia. Both accused were handed over to the Tribunal with some delay on 21 February 2006 and 10 June 2006 accordingly. The accused Ante Gotovina was arrested in Spain on 7 December 2005 and promptly transferred to the Detention Unit on 10 December.

73. The failure to arrest Radovan Karadžić and Ratko Mladić remains of grave concern for the proper administration of justice.

D. Pretrial procedure, trials and appeals

74. The prosecution was involved in pretrial and trial procedures in 23 cases (against 51 accused; not counting three contempt cases) and in seven rule 11 bis cases. The prosecution conducted 10 trials and was also involved in 15 post-judgement appellate proceedings.

E. Cooperation

75. The Tribunal's successful completion of its mandate depends on the full cooperation of relevant States, primarily the timely arrests of the six remaining

fugitives, so that the cases with a similar crime base can be joined to those already before the Tribunal.

1. Arrests

76. The Prosecutor continued her efforts with the relevant Governments and international institutions to secure arrests or surrenders. Despite the resources and time spent, only three accused were delivered to The Hague. The authorities of Serbia and Montenegro, but in particular the Government of Serbia, and the authorities of the Republika Srpska failed to arrest a single fugitive.

2. Croatia

77. Cooperation of the Government of Croatia, in regard to requests for assistance, information, archives, witnesses and suspects, remained swift and satisfactory. The operation to arrest and transfer accused Ante Gotovina can be credited to the efforts of the Government of Croatia.

78. Cooperation with the Office of the State Attorney of Croatia with respect to the referred Norac/Ademi case (under rule 11 bis), as well as other war crimes cases, has been efficient and professional.

3. Serbia and Montenegro

79. Cooperation by Serbia and Montenegro is not complete, consistent or expeditious. In the reporting period, the authorities in Belgrade assured the Prosecutor on a number of occasions that political will existed to finalize the issue of cooperation with the Tribunal. Regrettably, no progress was made on any of the six remaining fugitives, all of whom have connections to Serbia. Despite a number of promises and deadlines passed, the authorities failed to locate, arrest and transfer Ratko Mladić, who is identified as a priority target. The authorities, it appears, would prefer Mladić to surrender voluntarily.

80. Positive efforts of the President of the National Council for Cooperation, Rasim Ljajić, produced progress in regard to waivers for interviews and access to documents. In May 2006, the authorities of Serbia and Montenegro finally approved staff of the Office of the Prosecutor access to its archives, and the first mission's results were encouraging.

81. The independence of Montenegro, declared in June 2006, did not have any immediate negative impact on cooperation. The Office of the Prosecutor continued to have direct and positive cooperation with the Government of Montenegro. Assurances were made to confirm the commitment of the Government of Serbia to continuity of the new State's (Serbia) obligations towards the Tribunal.

4. Bosnia and Herzegovina: Federation of Bosnia and Herzegovina and Republika Srpska

82. Cooperation of the Federation of Bosnia and Herzegovina remained satisfactory, while cooperation of the Republika Srpska was not fully sufficient. The new government in Banja Luka assured the Prosecutor of its commitment to full cooperation. Recently, some significant archival collections appeared to be available to the Office, while some archives are still missing. There has been no arrest of accused by the Republika Srpska police; however, positive efforts were made

against the network of supporters and in tracing some of the fugitives. No progress was made to locate Karadžić.

83. Since the establishment of the Special War Crimes Chamber of the State Court of Bosnia and Herzegovina (in March 2005), cooperation with the war crimes section in the Office of the State Prosecutor of Bosnia and Herzegovina has intensified and significant results have been achieved. The first war crimes indictments were launched by the national prosecutors and three rule 11 bis cases were transferred from the Tribunal. Through training sessions and seminars, cooperation between the Office of the Prosecutor and the Bosnia and Herzegovina State Prosecutor's Office has matured into a true partnership for the prosecution of war crimes cases.

5. The former Yugoslav Republic of Macedonia

84. There were no particular problems in cooperation with the Government of the former Yugoslav Republic of Macedonia in the reporting period. Last year, the Prosecutor notified of her intention to refer back four cases to the former Yugoslav Republic of Macedonia, for which no indictments had been filed. On 16 February 2006, the Prosecutor met the Minister of Justice to discuss the modalities of the transfer; for judicial reasons, the transfer process will commence at the beginning of 2007.

6. Assistance in the territory of the former Yugoslavia and beyond

85. Reliance on international organizations and the support of the international community remains essential for the Prosecutor's activities. The Office of the Prosecutor enjoyed full support and assistance from the Office of the High Representative in Bosnia and Herzegovina. The Prosecutor was assured on a number of occasions that the commands in Bosnia and Herzegovina of the North Atlantic Treaty Organization and of the European Union force in Bosnia and Herzegovina (EUFOR) will continue to provide assistance to the Tribunal. However, the last successful operation to arrest a fugitive was conducted in July 2002 and there is insufficient coordination and sustained effort by different entities and agencies to capture Karadžić.

86. In Kosovo, the Office of the Prosecutor relied on the support and assistance of Kosovo Force (KFOR). However, in the reporting period, the Prosecutor had serious concerns regarding the lack of full cooperation provided by the United Nations Interim Administration Mission in Kosovo.

87. The valuable capacity of the Organization for Security and Cooperation in Europe missions in the region to monitor the war crimes trials, specifically the cases transferred from the Tribunal to the domestic courts under rule 11 bis, must be maintained.

88. There was ample example during the reporting period of the importance to the Tribunal's success of European Union support and conditionality being applied to all States of the former Yugoslavia with aspirations of joining the European Union.

7. Training and assistance in the development of domestic jurisdictions

89. The Office of the Prosecutor continued to encourage and support the furtherance of the rule of law in the region, yielding very encouraging results in the

course of national trials for war crimes. Training sessions, conferences and seminars were held and the volume of direct prosecutorial cooperation and exchange of evidence in specific cases with national prosecutorial authorities increased manifold. The formed important partnerships of the Office of the Prosecutor with State Attorney M. Bajić in Zagreb, State Prosecutor M. Jurčević in Sarajevo and Prosecutor for War Crimes V. Vukčević, in Belgrade.

V. Activity of the Registry

90. The Registry, headed by Hans Holthuis, continued to play a crucial role at the Tribunal by providing administrative functions and judicial support.

A. Office of the Registrar

91. Key achievements of the Registry Advisory Section were the drafting of briefs in several personnel cases and other claims. The Section also negotiated a substantial number of commercial contracts. It maintained relations with the host State over numerous issues and advised on the conclusion of an agreement with the host State for making additional privileges available to staff at the P-4 level and below, and on an agreement for the extension of the services and facilities for the Detention Unit.

92. The Section also pursued the action plan of the Registrar to obtain 10 more relocation of witnesses and enforcement of sentences agreements. The Section assisted the Registrar with the management of the completion strategy planning dossier, liaisons with the Office of Legal Affairs of the United Nations Secretariat and fundraising and related legal issues. The Section facilitated cooperation with domestic courts in the former Yugoslavia in the context of the transfer of cases. The Registrar also met with the Registrars of the Tribunal for Rwanda, the Special Court for Sierra Leone and the International Criminal Court in order to discuss best practices.

93. During 2005, the Section, in cooperation with the General Services Section, continued to work actively on Tribunal legacy issues, which include ongoing legal responsibilities and the disposition and management of the Tribunal's archives. In November 2005, the Tribunal submitted a joint Tribunal for Yugoslavia/Tribunal for Rwanda discussion paper to the Office of Legal Affairs.

94. The former Public Information Service and Outreach Programme were reorganized into the Communications Service in 2005. The Section currently consists of a Media/Web/Outreach Office and a Publications/Tribunet/Visits Office. Throughout the reporting period, public interest in the Tribunal was more pronounced. More than 100 press releases were issued, 40 regular press briefings were held and approximately 500 interviews of senior staff or judges with journalists were organized.

95. In the region of the former Yugoslavia, the Outreach Programme carried out a diverse range of public relations activities, produced a number of publications in the local languages and implemented and participated in conferences, round tables and workshops. The Programme also brought numerous persons and groups from the region to the seat of the Tribunal.

96. The Web Unit of the Media/Web/Outreach Office continued to develop the Tribunal's extensive website in English, French and Bosnian/Croatian/Serbian, as well as information in Albanian and Macedonian. The Section maintained the Internet broadcast of courtroom proceedings in English, French, Bosnian/Croatian/Serbian and, in cases, relevant to Kosovo, in Albanian. The Publications/Tribunet/Visits Office ran several important services, among them many visits of legal professionals, documentation requests and the Tribunal's prize-winning Intranet.

B. Judicial Support Services Division

97. In the reporting period, the Court Management and Support Services Section supported 10 trials and numerous other hearings and maintained all court records, transcripts and judicial archives for the Tribunal. During the same period, the local Information and Communication Technologies Committee and Organization-wide Programme Review Committee gave their approval to launch the judicial database, which contains all of the Tribunal's jurisprudence. It is anticipated that the entirety of the Tribunal's public jurisprudence should be available online by the end of 2006.

98. Since 1 August 2005, the Operations Unit of the Victims and Witnesses Section has brought 321 witnesses and accompanying persons to The Hague. The Unit organized the fifth network development conference, in September 2005, in Sarajevo, building on four previous conferences aimed at establishing referral networks for witnesses requiring psycho-social assistance.

99. The Protection Unit of the Victims and Witnesses Section continues its work in the relocation of protected witnesses.

100. During the reporting period, the Detention Unit was operating at a high level of activity, especially following the death of Milan Babić, a detained witness previously convicted by the Tribunal who committed suicide on 5 March 2006, and Slobodan Milošević who died of natural causes on 11 March 2006. An audit conducted by representatives of the Government of Sweden thereafter found the quality of care and security generally to be positive but also made a number of recommendations, which are being implemented by a working group.

101. In December 2005, the Detention Unit successfully moved all detainees, staff and infrastructure, from two physically separate units of 36 and 32 cells into a single facility of 84 cells. The move has facilitated a far more cohesive programme of remand for all detainees and better allows for the flexibility required to hold high profile accused.

102. As a direct result of the move towards implementing the e-Court system and the right of accused to participate in their own defence, the Registry implemented a procedure to allow the secure use of computers by detainees. Each detainee currently has the opportunity to be provided with a specially configured Registry-owned computer in their cell.

103. The Office for Legal Aid and Detention Matters has developed a separate information technologies network for defence counsel to allow them to access the Tribunal's judicial database from any location. Cooperation and coordination with defence counsel has improved, an example being the finalized version of an amended directive on the assignment of defence counsel. The Registry is seeing the

benefits of a tightened regime of qualification requirements for defence counsel. Issues related to counsel conduct and financial procedures are arising less often. Finally, the Office and the Registry have cooperated intensively with the Registry bodies at the State court in Sarajevo in relation to the Tribunal's referral decisions under rule 11 bis.

104. The Registry continued to facilitate the rights of defendants through a diverse and competent force of defence counsel, defence assistants and experts. Many defence counsel are organized into the Association of Defence Counsel practising before the Tribunal, a key body in maintaining a dialogue between the Tribunal and counsel on financial and other procedural issues.

105. The Registrar was further assisted by an advisory panel, a body composed of attorneys advising on issues related to defence counsel. The Disciplinary Panel for Defence Counsel, according to the code of professional conduct, processed several disciplinary cases.

106. International and national law journals, as well as e-journals, were made electronically available through the Tribunet. Users can now also access other national commercial databases in Dutch, French, German and Swedish. Within the framework of the inter-tribunal cooperation agreement, the library continued its support for the libraries of the Tribunal for Rwanda and the Special Court of Sierra Leone.

C. Administrative Support Services Division

107. By its resolution 60/243, the General Assembly decided to appropriate to the Special Account for the Tribunal a total amount of $305,137,300 gross ($278,559,400 net) for the biennium 2006-2007. The appropriation reflects a reduction in nominal terms of approximately 7 per cent as compared with the revised appropriation for the biennium 2004-2005.

108. In its resolutions 49/242 B and 53/212, the General Assembly invited Member States and other interested parties to make voluntary contributions to the Tribunal that were acceptable to the Secretary-General. As of 15 June 2006, cash donations of approximately $43 million had been received for the voluntary fund to support the activities of the Tribunal. This includes a total of $825,000 received during the reporting period. Voluntary contributions have been utilized for activities related to supporting the Tribunal's prosecution and investigation activities, such as the arrest initiative, prosecution support, the review of cases through the rules of the road project and joint advocacy training programmes. Contributions have also assisted the Registry through support of victims and witnesses, the outreach programme and support to inter Tribunal cooperation.

109. The staffing table approved for the biennium 2006-2007, which reflects no variation vis-à-vis 2005 levels, encompasses a total of 990 posts (987 for the Tribunal and 3 for Office of Internal Oversight Services resident auditors). The approved budget included 20 internal redeployments intended to strengthen trial and appellate support work in both the Office of the Prosecutor and Chambers as follows: (a) seven posts to the Appeals Unit of the Office of the Prosecutor; (b) eight Professional posts to the Prosecution Division of the Office of the Prosecutor; and (c) five Professional posts to the Chambers Legal Support Section of the Registry.

These redeployments were approved in response to the shift in the Tribunal's focus towards high-level perpetrators, multi-accused cases and more complex appeals, expected to be held during the biennium 2006-2007.

110. During the reporting period, the Human Resources Section recruited 73 staff in the Professional and higher categories and 103 General Service staff. The Section oversaw the administration of a total of 1,112 staff members: 447 at the Professional level (44 per cent of whom are female) and 665 at the General Service level. The Tribunal has staff from 80 countries. One hundred ninety-nine Interns provided assistance to the Tribunal, while the number of consultants and individual contractors totalled 185. Some 900 staff took part in training activities.

111. The departure of key personnel in advance of the completion dates would have a negative impact on the Tribunal's ability to meet its mandate; to stem such departures, the Human Resources Section has implemented a number of measures to improve job security.

112. In June 2005, a project was organized to remodel the three courtrooms of the Tribunal and support facilities to allow trials of up to 18 accused simultaneously. At the same time, technical alterations were made to provide full implementation of the e-Court system environment and to allow simultaneous interpretation into four languages. The project was completed within the Tribunal's budgetary allotment for the 2004-2005 biennium.

113. In collaboration with the United Nations Archives and Records Management Section, the Section continues to work on projects required to prepare the Tribunal's substantive records for transfer and dissemination prior to closure. Partially in response to these initiatives, the Government of the host State, through the Office of the Mayor of The Hague, organized a meeting on judicial archives in The Hague, on 14 July 2006, in which the Registry participated.

114. In 2005, the Procurement Section, which ensures the transparent acquisition of goods and services for the Tribunal at the best value, signed eight service contracts in coordination with the requisitioning offices at the Tribunal that are valid through 2010, in parallel with the completion strategy.

VI. Conclusion

115. As the present report demonstrates, the Tribunal remained committed to doing all in its power to discharge its mandate as effectively and efficiently as possible during the reporting period. Significant challenges were faced, with the deaths of Slobodan Milošević and Milan Babić. Nevertheless, the Tribunal intensified its judicial and prosecutorial work, completed a number of internal reforms to implement the completion strategy and strengthened efforts to further the rule of law in the former Yugoslavia as a central part of its legacy. Key achievements include: the referral of cases of nine lower to mid-level accused to the region; the early commencement of the three trials of multi-accused involving 21 accused and joining 14 cases; the adoption of several amendments to the rules to speed up appeals proceedings and to shorten the prosecution's indictments; the implementation of concrete measures for shortening and streamlining pretrial and trial proceedings; the appointment of ad litem reserve judges to trials of multi-accused; and the remodelling of the Tribunal's courtrooms to accommodate larger trials.

116. Since the Tribunal began, 161 persons have been charged and proceedings against 94 accused have concluded. In addition, several proceedings in the former Yugoslavia have commenced independently against alleged perpetrators. It is crucial that States, especially those in the former Yugoslavia, cooperate fully so that the remaining high-level fugitives, in particular Ratko Mladić and Radovan Karadžić, are apprehended and tried before the Tribunal. Only then will peace and reconciliation in the former Yugoslavia be fully restored.

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Macroeconomic policy questions

International trade and development

Report of the Secretary-General

Summary

The present report covers recent developments in international trade and the trading system, in particular the multilateral trade negotiations under the Doha work programme since the Sixth Ministerial Conference of the World Trade Organization in December 2005, and their implications for developing countries. The suspension of the Doha Round announced in July 2006 has cast significant uncertainty on the negotiations and may have major implications for the trading system. International trade can make a valuable contribution to development in all countries and especially in developing countries. Efforts to improve the trading environment, particularly through multilateral negotiations, can thus improve the prospects for economic growth and development and contribute to achieving the Millennium Development Goals.

* A/61/150.

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I. Introduction

1. The present report has been prepared pursuant to General Assembly resolution 60/184 of 22 December 2005, in which the Secretary-General, in collaboration with the secretariat of the United Nations Conference on Trade and Development (UNCTAD), is requested to report to the Assembly at its sixty-first session on the implementation of that resolution and on developments in the multilateral trading system.

II. Rising role of trade in development

2. International trade can be a powerful engine of growth, development and poverty eradication in all countries, particularly in developing countries. This can be seen from the increase in the share of exports of goods and services in gross domestic product (GDP). It increased between 1980 and 2004 from 14 per cent to 35 per cent for the world; from 13 per cent to 31 per cent for developed countries; and from 25 per cent to 49 per cent for developing countries. This shows that trade is increasingly a major source of income for many countries. It contributes to generating resources for development by stimulating production, promoting exports, increasing access to essential services and creating jobs, income and welfare. Trade's contribution to development is recognized by the United Nations Millennium Declaration (see General Assembly resolution 55/2) and the 2005 World Summit Outcome (resolution 60/1).

3. The rising proportion of trade in GDP of developing countries is primarily due to the greater integration in the world economy and strong trade performance of dynamic developing countries, mostly in South and East Asia but also in Latin America. In 2005, the world's merchandise exports recorded a robust growth of 13.8 per cent and their value reached $10.3 trillion, while developing countries expanded their exports at a faster pace (21.3 per cent) than developed countries (9.2 per cent as a group, 9.4 per cent for the United States of America and 8.7 per cent for the European Union) to reach $3.7 trillion. As a result, their share in world trade exceeded 35 per cent (35.9 per cent) for the first time since 1948. The major contributor to this increase in developing countries' exports continues to be China, which represented about one fifth of the total developing countries' exports and increased its exports by 28 per cent. Major petroleum exporters, representing yet another fifth of developing countries' exports as a group, recorded significant export growth of 35.3 per cent owing mainly to the rise in oil prices by 41 per cent. Among developing regions, North Africa experienced the greatest trade expansion (35.1 per cent), followed by West Asia (30.6 per cent), South America (27.5 per cent), sub-Saharan Africa (22.2 per cent), South and South-East Asia (18.8 per cent) and the Caribbean (14.1 per cent). South-South trade is intensifying, as 42 per cent of developing countries' exports were destined to other developing countries, and represented some 14 per cent of the world's total exports in 2003. Over two thirds of developing-country exports were composed of manufactured goods. Primary commodity exports remain important for Africa and the least developed countries, accounting respectively for 70 and 64 per cent of exports. Key commodity price indices increased significantly in 2005, particularly for iron, copper and petroleum.

4. Services have gained prominence and become a new growth area for a number of countries. The contribution of services to GDP, trade and employment has increased remarkably over the years in both developed countries and developing countries. In 2005, global services exports expanded by 10 per cent and reached an estimated $2.4 trillion. This represents one fifth of the world's total exports of goods and services. The ratio is lower for developing countries (13 per cent) although their services exports grew at a faster pace (14.1 per cent) than developed countries' (7.8 per cent as a group, 10.1 per cent for the United States and 6.5 per cent for the European Union) to reach $576 billion, equivalent to 23.6 per cent of world services exports. The dynamic exporters in South and South-East Asia accounted for about two thirds of the total developing country services exports and recorded an export growth of 15.3 per cent. South America (21.3 per cent), sub-Saharan Africa (13.5 per cent) and the Caribbean (11.1 per cent) also experienced a substantial expansion in the export of services.

5. Notwithstanding this overall positive performance, many developing countries, especially in Africa, least developed countries and small and vulnerable economies remain marginalized from the expanding international trade. For instance, the least developed countries saw their exports increasing by 27.5 per cent for goods and by 9.7 per cent for services in 2005. However, their share in world trade remained marginal both in terms of goods (1.8 per cent) and services (0.5 per cent). Their participation in international trade remains vulnerable owing to various factors, including structural problems related to the building of competitive supply capacities and diversification of production towards new and dynamic sectors of world trade and in services. For these countries, therefore, trade liberalization alone is not a magic bullet to foster development. There is a need for accompanying flanking measures and "Aid for Trade" to help them to take advantage of trade and trade liberalization.

6. Against this backdrop, all countries need to ensure that they participate actively in the multilateral trading system, shaping development-friendly rules and disciplines that provide the framework and policy space within which to trade and developing strategies to take advantage of the opportunities emerging from the international trading system. It is equally important to continue developing an open, transparent, predictable, non-discriminatory and equitable multilateral trading system, especially through the Doha Round, with a substantial development content.

III. Developments in the multilateral trading system

7. The year 2006 is a landmark year for the multilateral trading system and the World Trade Organization (WTO). The substantive negotiations in the current, five-year-long Doha Round were expected to conclude with a single undertaking in December among 149 WTO members that would build on and deepen liberalization in current WTO agreements and usher in a more specific, stronger and operational focus on the development dimension. There is an urgent need to resume the suspended talks so that the compact in the Doha Ministerial Declaration of 2001 (A/C.2/56/7, annex) to place the needs and interest of developing countries at the heart of the Doha Round can be carried to a positive, development-oriented outcome. This is the critical challenge facing WTO members.

8. The Sixth WTO Ministerial Conference, held in Hong Kong, China, from 13 to 18 December 2005, recorded modest progress. In agriculture, agreement was reached on 2013 as the end date for the elimination of export subsidies. On cotton, agreement was reached on the elimination of all forms of export subsidies in 2006 and the provision of duty-free quota-free treatment for cotton exports from least developed countries. On non-agricultural market access, a "Swiss" tariff-cutting formula was chosen. On services, Ministers set specific modal and sectoral objectives for making new and improved commitments, and launched multilateral negotiations. On development issues, five agreement-specific special and differential treatment proposals for least developed countries were adopted, notably duty-free quota-free treatment. Important recognition was given to the need for Aid for Trade.

9. The post-session negotiations focused on establishing modalities in agriculture and non-agricultural market access by 30 April so as to conclude the negotiations by the end of 2006 as mandated by the Hong Kong Ministerial Declaration. Attention was given to the "triangle of issues" considered as essential for an across-the-board grand bargain, including domestic support and market access in agriculture and non-agricultural market access. Greater efforts were called for from the United States to move on agricultural domestic support including for cotton, from the European Union (and G-10 that are countries of net agricultural importers) to cut agricultural tariffs more substantially, and from some large developing countries to make greater reductions in industrial tariffs and to provide substantial offers in services.

10. Trade ministers from G-6 countries (Australia, Brazil, the European Union, India, Japan and the United States) held a meeting in July in an effort to break the impasse but were unsuccessful. Negotiations foundered on the agricultural leg, as the gap in the level of ambition between market access and domestic support remained too wide. This led the Director-General of WTO to propose a suspension of the negotiations across all areas of work of the Round to review the situation, examine available options and review positions, which WTO members generally supported. The Doha Round is thus effectively suspended across without an indicative date for its resumption or a road map for the way forward.

11. The suspension of the Round has cast significant uncertainty over the prospects of the negotiations. The timing and conditions for resumption remain unclear. Without an early resumption, the timely conclusion of the Round is put into doubt, as this would also depend on the renewal of the trade promotion authority of the President of the United States, set to expire in June 2007. Many countries emphasized the importance of preserving the integrity of the Doha mandate under the single undertaking. In the interim, work might continue on Aid for Trade and the integrated framework. In the coming months, the Director-General of WTO and others are expected to launch intense diplomatic activities and consultations aimed at securing an early resumption. It is believed that the prospects for resumption will be related to developments in domestic electoral processes and political decisions.

12. The longer-term implications of the suspension are manifold. First, it is a setback to the international efforts to render the multilateral trading system more equitable and development-oriented, as the successful development-oriented outcome of the Round could have brought gains for economic growth and poverty alleviation, including in new growth areas such as services where significant gains

are expected from commercially meaningful commitments in modes 4 (temporary movements of natural persons) and 1 (cross-border supply). Some of the progress attained so far in the negotiations will be placed on hold. Second, the suspension sends a negative signal for the future of the world economy and may encourage a resurgence of protectionism. Third, there is a risk that countries will intensify their pursuit of bilateral and regional trade initiatives, in which developing countries have less bargaining power, and some developing countries might be left out of the process, undermining most favoured nation treatment and non-discrimination. Fourth, distortions caused by subsidies in world agricultural trade will persist at the current level, thereby jeopardizing the prospects of developing countries to generate additional export revenue and income from agricultural exports, including cotton. Fifth, greater recourse may be made to dispute settlement cases.

13. The suspension of the Round calls for careful reflection on the modus operandi of the trade negotiations and the definition and scope of the trade agenda. A comprehensive round of negotiations under a single undertaking has been considered an effective means of reaching mutually beneficial agreements among a multitude of participants, as it is expected to facilitate intersectoral trade-offs among them. While the Doha negotiations incorporated a broad agenda, the centrepiece continues to be agriculture, which, together with services, is part of a built-in agenda from the Uruguay Round. In agriculture, the expected across-the-board trade-offs have not materialized, as the estimated gains are not seen as sufficient to offset the political costs in farm constituencies. Moreover, the breadth of the agenda resulted in diluting the attention given to the core negotiating issues such as agriculture, services, implementation and special and differential treatment. In this light, consideration could be given to pursuing a more realistic, simple and selective format that would have greater prospects of success, focusing on core trade agendas, including rules aspects, and with the required flexibilities for developing countries. Such an approach would be more conducive to bringing developing countries on board.

14. It has to be emphasized that the relevance and importance of WTO as a central pillar of the multilateral trading system in facilitating the implementation of multilateral trade agreements, providing the forum for negotiations, administering dispute settlement mechanisms and conducting trade policy reviews, remains intact.

15. Given the key development stakes at issue, and the commitment of the international community to work expeditiously towards implementing the development dimensions of the Doha Round as reaffirmed in the 2005 World Summit Outcome, effort and leadership are needed to ensure that the suspension of the Round does not lead to the lowering of ambitions in the development dimension of the Round, and that core negotiating issues of developmental importance are addressed meaningfully. As development is intended to be at the heart of the process, it needs to be fully and effectively integrated into the core areas of market access negotiations (where most of the commercial benefits would arise) and into the requisite flexibilities to provide policy space for development. It is the shared responsibility of all countries, and especially the key players, to demonstrate renewed political will and additional flexibility in the search for compromise solutions to facilitate the resumption of negotiations, maintaining inclusiveness and transparency in the process and not losing sight of the development component of the Round. The involvement of the Secretary-General has been sought in mobilizing support for an early resumption of the negotiations.

IV. Specific areas of negotiation

1. Agriculture

16. Agriculture remains the most important sector in many developing countries. It accounts on average for 38 per cent of employment in developing countries and 71 per cent in least developed countries. Agricultural products often account for over 50 per cent of developing countries' total exports. A large proportion of their poor population lives in rural areas. Liberalization and reform in agricultural trade could bring about important gains for developing countries, making a useful contribution to poverty reduction. UNCTAD estimates show that agricultural export revenues of developing countries could increase by up to 30 per cent under some liberalization scenarios.

17. Agricultural negotiations are aimed at substantial improvements in market access; reductions of all forms of export subsidies, with a view to phasing them out; and substantial reductions in trade-distorting domestic support. At the Sixth Ministerial Conference, agreement was reached to establish full modalities by 30 April 2006. Significantly, progress was made in setting 2013 as the end date for the elimination of export subsidies, with a commitment to front-loading implementation. Little movement was made on domestic support. As regards flexibilities for developing countries, the right of developing countries to self-designate special products for food security, livelihood security and rural development was agreed and clarification was provided on the trigger conditions of the proposed special safeguard mechanism for developing countries. Agreement was also reached on the exemption of those developing countries without aggregate measurement of support commitments from overall reduction commitments and de minimis[1] ceiling cuts, as well as a review of the Green Box[2] criteria to provide greater coverage of developing country programmes.

18. Whereas all WTO members continue to be committed to the objective of substantial improvements in market access and substantial reductions in trade-distorting domestic support, there were diverging views as to the exact level of adjustments to be made in those two pillars, which led to the suspension of the negotiations. The United States has called for significant improvement of market access through substantial cuts in applied tariffs and very limited flexibility to diverge from those cuts for sensitive products before it would improve its offer on domestic support reductions. The European Union and some developing countries, on the other hand, held that greater cuts in trade-distorting domestic support were required.

19. On market access, the Uruguay Round reformed the rules of agricultural trade but did not result in significant liberalization in bulk commodities, although there were some useful tariff cuts for higher value added horticultural and floricultural products. Agricultural tariffs in the major developed countries remain at an average of about 38 per cent. Developing countries' bound tariffs are higher but their applied rates are significantly lower (see table 1).

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[1] "De minimis" support designates minimum permissible trade-distorting domestic support not exceeding 5 per cent of total agricultural production.

[2] "Green Box" designates those domestic support measures that have no or minimal trade-distorting effect.

Table 1
Tariffs on agricultural products
(Percentage)

	Developed countries	*Developing countries*
Bound	38	61
Applied	34	25

Source: UNCTAD Trade Analysis and Information System (TRAINS), simple averages.

20. At the Sixth WTO Ministerial Conference, agreement was reached on the structure of the tariff-cutting formula that would determine the reduction for each tariff, but not on the percentage cuts. Although the European Union was not the only market considered in the negotiations, its average cuts were used as a benchmark that could, to a certain extent, be used to determine the level of cuts in developing countries, as some participants are arguing that the level of tariff cuts by developing countries should be related to that of developed countries. After the Conference, the European Union indicated its willingness to move from its earlier offer of average cuts of 39 per cent closer towards the developing country group (G-20) proposal of 54 per cent, but not as far as the earlier proposal made by the United States of cuts of about 66 per cent. Under the G-20 proposal, developing countries are expected to make average cuts in bound rates of up to 36 per cent. Some developed countries have observed that owing to the binding overhang in developing countries' tariffs structures (the gap between bound and applied rates), effective reduction in applied rates in some developing countries might be limited.

21. Another stumbling block in the market access pillar was the exemptions permitted to all countries, both developed and developing, under "sensitive products". The share of tariff lines that could be designated as sensitive products ranges from 1 per cent (United States and G20) to 15 per cent (G10). The number of sensitive products would affect the overall level of tariff reductions, as a permissive approach to exemptions could substantially reduce the potential global gains. Whether the number of sensitive products makes a significant difference to the level of ambition depends also on the level of tariff reductions or expansion of import tariff quotas that is required for sensitive products, but this is yet to be resolved.

22. Erosion of preferences is a major concern for developing countries dependent on long-standing preferential schemes for their exports. Developing countries have also stressed the importance of safeguarding their food security, livelihood security and rural development and, guided by these indicators, they have the right to self-designate special products. A group of developing countries that called for these special and differential treatment measures (G33) proposed that 20 per cent of tariff lines be eligible for special products while others found this too high. The special safeguard mechanism for developing countries also remained controversial. It was agreed at the Sixth Ministerial Conference that an additional duty would be allowed in the case of a price decrease and/or an import surge, but it is yet to be determined to what extent and how such measures could be invoked by developing countries, in terms of eligible products, trigger conditions and durations of measures. Many developing countries called for broad coverage and flexible rules but others favoured a limited safeguard tool.

23. Domestic support payments amounted to $185 billion in 2000 in the three major subsidizing entities (European Union, Japan and United States) alone, which represented about 38 per cent of the value of production. Some support measures are considered non-trade distorting and are not subject to reduction commitments. Of the trade-distorting domestic support that is subject to reduction commitments, the support actually provided in 2005 was below the commitment level. This gap between the committed amount and actual spending is such that the European Union, Japan and the United States can accommodate reductions of their potential commitment of overall trade-distorting support of about 47 per cent, 86 per cent and 63 per cent, respectively, without reducing their actual spending.

24. The Sixth Ministerial Conference agreed that the European Union, as the biggest provider of trade-distorting domestic support, would make the deepest cuts in such support, followed by Japan and the United States and finally all other countries, without specifying the exact cuts. The overall trade-distorting domestic support, which would be capped and reduced, is composed of three components which themselves would be either reduced or capped. Since the European Union reformed the Common Agricultural Policy in 2003 and shifted most of its support into the reduction exempt Green Box of non-distorting, or minimally trade-distorting support, the major difficulty in this area of the negotiations was seen as the support level in the United States. The United States offered to reduce its level of trade-distorting domestic support to about $22 billion annually. Since the current spending is $19.7 billion, this was found inadequate by many developing countries, which demanded significant cuts in actual spending to around $12 billion, and by the European Union, which demanded cuts that would result in less than $20 billion for the overall commitment of the United States.

25. A remarkable achievement in the negotiations was the commitment to eliminate all forms of export subsidies by 2013. This was a significant issue during the Uruguay Round, but diminished in importance because of the decline in the use of this form of support to around $2.4 billion (2001). Nonetheless, most developing countries and agricultural exporters called for the elimination, which would advantage producers in developing countries and in other competitive agricultural exporting countries. Technical details regarding the four forms of export subsidies (direct subsidies and subsidy components in export credits, State trading enterprises and food aid) are still open. A "safe box" for bona fide food aid will be provided. To some extent, proposals to eliminate export subsidies are a double-edged sword for developing countries, because their elimination may increase the international prices of imported food. In an attempt to offset this, it was agreed that appropriate provisions in favour of least developed countries and net food importers, as provided for in the Marrakesh Ministerial Decision should be completed.

26. On cotton, the Sixth Ministerial Conference agreed to eliminate all forms of cotton export subsidies in 2006 and to have developed countries provide duty-free quota-free market access for cotton exports from least developed countries from the beginning of the implementation period of the Round. On domestic support, the Conference provided for more ambitious and quicker reduction of trade-distorting domestic support on cotton than other domestic support. The "Cotton Four" countries (Benin, Burkina Faso, Chad and Mali) had initially hoped for an "early harvest" on this issue, particularly in respect of domestic support and a credible development assistance package. Recently, they proposed a specific formula that implies larger cuts in cotton subsidies than for agriculture as a whole and an

implementation period for the cuts of one third the time for other support. The majority of trade distortions in the cotton sector stem from domestic support and thus remain unresolved.

2. Non-agricultural market access

27. Reducing or removing protection in the non-agricultural sector could lead to global gains, although these would vary between countries and sectors. UNCTAD estimates suggest that global welfare gains from non-agricultural market access liberalization could be of the order of $20 billion to $60 billion annually. Developing countries could potentially enjoy about two thirds of these gains. However, non-tariff barriers and market entry barriers or residual bias in tariff structure may potentially impede developing countries from benefiting from new trading opportunities. Global export revenues for industrial products may increase between 2.6 per cent and 5 per cent under a reasonable range of scenarios, but the gains would not be spread evenly across countries or sectors. The particular trade flows and tariff cuts matter.

28. Some countries may lose from liberalization because of loss of preferential access, competition from more efficient rivals or adverse terms of trade. For countries that can compete, a shift in resources from declining to expanding sectors is required, and this will involve some adjustment costs in terms of unemployment, retraining of labour and writing off of capital. The adjustment costs increase with more ambitious scenarios and can be substantial, with a decrease of employment of up to 50 per cent in specific sectors. Deeper liberalization may also lead to significant tariff revenue losses, which is a concern in those developing countries where tariffs are a major source of Government revenue. Thus, policies facilitating the adjustment process are important.

29. Average tariffs in developed countries are low (see table 2), but tariff peaks and tariff escalation were identified as two issues that need addressing.

Table 2
Tariffs on industrial products
(Percentage)

	Developed countries	*Developing countries*
Bound	2.9	12.6
Applied	2.8	8.1

Source: UNCTAD TRAINS, trade-weighted averages.

30. The objectives of the non-agricultural market access negotiations have been to reduce or eliminate tariffs, including tariff peaks, high tariffs and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries, with less than full reciprocity in reduction commitments applied to developing countries. The "July package" in 2004 further specified that developing countries would enjoy less-than-formula cuts or the flexibility to leave some tariff lines unbound provided certain criteria are met. Developing countries with a very low binding coverage would be exempt from the formula but would

have to bind their tariffs, probably at the overall average of bound rates of developing countries. At the Sixth WTO Ministerial Conference, a harmonizing "Swiss tariff-cutting formula" was chosen and the coefficients (the basis and numbers are yet to be agreed) would be more than one. Participation in the sectoral initiatives was clarified to be on a voluntary basis. Furthermore, for the first time in the negotiations, parallelism was established with agriculture so that the levels of ambition in both areas are comparably high.

31. Non-agricultural market access negotiations have centred around three issues: the tariff-cutting formula (now determined as a "Swiss" formula), the treatment of unbound tariffs and the exemptions to the formula. Also discussed are flexibilities for small and vulnerable economies, preference erosion, sectoral initiatives and non-tariff barriers. WTO members had conflicting views in the negotiations on how to achieve these targets. Regarding the formula, two broad approaches have been discussed. The first option consists of setting two predetermined coefficients, one for developed and one for developing countries. The second option specifies national coefficients that are related to the average initial bound tariff rates. The first harmonizes tariffs across countries while the second tends to harmonize tariffs within countries only. The level of coefficients also matters as it corresponds to maximum permitted tariffs and determines the level of tariff cuts.

32. Members did not agree on the specific coefficient to which the Swiss formula would apply or on the question of whether the coefficient would be common across countries or be differentiated according to initial tariffs or some other criterion. There seems to be general agreement, nonetheless, that developing countries would have a higher coefficient than developed countries. This implies lesser tariff cuts for developing countries for tariffs of similar size. However, since developing countries start off with higher initial tariffs, their average cuts can still be higher than those in developed countries. Developing countries noted that such results would be against the less than full reciprocity principle.

33. In essence, the major stumbling block in the non-agricultural market access negotiations is the level of tariff reduction, or "ambition". Developing countries in particular are concerned that ambitious bound tariff reductions will lead to reductions in applied rates and consequently a flood of imports that may overwhelm their domestic industries. Developed countries are keen to ensure that substantial improvements in market access are forthcoming, particularly in the large and potentially lucrative markets.

34. As noted earlier, developing countries are experiencing rapidly expanding trade with one another, and South-South trade now accounts for some 42 per cent of their exports, so that reducing tariffs among them would contribute to further strengthening South-South trade. The average applied tariff on this trade is 7.2 per cent but reducing these tariffs under a formula approach has proven more difficult than it first appeared, as currently only 78 per cent of developing-country tariffs are bound, and the treatment of unbound tariffs in the negotiations remained unresolved.

35. The importance of the treatment of unbound industrial tariffs stems from the high proportion of unbound tariffs in developing countries, often on sensitive products. Negotiators have agreed on a non-linear markup over the applied rate. For example, a hypothetical markup of 30 percentage points would increase an applied tariff of 10 per cent to 40 per cent and an initial tariff of 100 per cent to 130 per cent. With the exception of countries with a level of binding less than 35 per cent,

the final tariff would then be cut according to the Swiss formula. As yet, there is no agreement as to what the markup might be.

36. Another unresolved issue of significance concerns flexibilities for developing countries, which provide for (a) less-than-formula cuts and (b) exceptions from binding or the application of the formula. Such flexibilities would enable developing countries to protect industries they consider important. Some developed countries have raised concern that the flexibilities need to be limited to a given number of tariff lines and to a given proportion of imports, and thus should be related to the overall level of tariff cuts under the Swiss formula. Most developing countries, maintaining that these flexibilities are stand-alone allowances already agreed to consider such linkage inappropriate. The challenge therefore is to find an acceptable balance between the level of flexibility and the overall level of ambition.

37. In seeking a solution to such issues, taking account of the development goals of the Doha Declaration (A/60/111, annex I), some important elements need to be addressed. For developing countries, processed and manufactured goods have increased significantly in importance in recent years and currently represent on average nearly 70 per cent of their exports. Although tariffs are relatively low in industrial products compared with other sectors, there are some protected sectors of export interest to developing countries where tariff peaks and escalation are prevalent. Developed countries have 8 per cent of their tariffs at more than three times the national average, and average tariffs on intermediate and final products are five times the average tariffs on primary products. Furthermore, developing countries face higher average applied tariffs on their exports to developed countries (3.9 per cent) than developed countries face on their exports to other developed countries (2.1 per cent) owing to their export product composition, which tends to be concentrated in more heavily protected sectors. This is the case in spite of the preferential access that many developing countries enjoy on their exports to developed countries.

38. Developing country exporters are also increasingly facing non-tariff barriers, especially trade-distorting technical barriers and standards that often go beyond international standards and which limit their effective entry into the key markets. The UNCTAD Trade Analysis and Information System (TRAINS) shows that the use of technical measures doubled within the last decade. There is also a clear trend of non-tariff barriers becoming more stringent, complex and multidimensional (often combining environmental, health, including animal health, safety and social/labour requirements). Non-tariff barriers are widespread in dynamic export products of developing countries such as electrical and electronic goods, textiles and clothing, footwear, fruit and vegetables. Quantification and categorization of non-tariff barriers is difficult, and comprehensive and systematic approaches are limited. UNCTAD is leading an international effort, along with other agencies, to define and classify non-tariff barriers through its Secretary-General's Group of Eminent Persons on non-tariff barriers. The distinction between discriminatory and non-discriminatory non-tariff barriers is difficult since there is no clearly defined point at which measures become discriminatory. Non-discriminatory measures may hinder exports to developed countries due to the high fixed costs required to meet the standards. The relative cost of meeting a European standard of $2,000 is more significant for a small farmer in a developing country than for a developed-country farmer.

3. Services

39. A well-functioning services sector, with backward and forward linkages with the rest of the economy, is central for enhancing the efficiency and competitiveness of an economy and for improving infrastructure, facilitating trade and providing services essential to human life and well-being. Services have a key role to play in the achievement of the Millennium Development Goals, including poverty reduction and gender empowerment. The liberalization of trade in services provides opportunities for economic growth and development. However, certain preconditions have to be met for liberalization to generate the expected gains, including securing an appropriate content, pacing and sequencing of market opening and regulatory reform; implementing suitable complementary policies and regulations (such as competition laws); and providing support for domestic supply capacity-building. A comprehensive national assessment of the services sector from this perspective is important in defining appropriate policies and national negotiating objectives and options. UNCTAD has assisted developing countries in undertaking such assessments.

40. Services negotiations, initiated in 2000 as a built-in agenda from the Uruguay Round, continued under the Doha Round encompassing market access and rule making under the General Agreement on Trade in Services. The Sixth Ministerial Conference set modal and sectoral objectives and qualitative benchmarks for making new and improved commitments, and agreed to the initiation of multilateral negotiations in addition to request-offer negotiations, which remain the main modality for negotiations. The target time line for a second revised offer was set at 31 July and for a draft schedule of commitments at 31 October 2006. Proposed quantitative benchmarks were not retained given strong resistance from developing countries.

41. Regarding market access, as at August 2006, 71 initial offers had been submitted by 95 WTO members and 30 revised offers by 54 members. Despite this number of offers, improvements in quality have been limited in terms of both the sectoral coverage and the depth of offers. The newly launched multilateral negotiations have not yet achieved the expected liberalization commitments although they were considered as useful in clarifying technical issues. The participation of developing countries in the multilateral negotiations was limited to a small number.

42. Mode 4 (temporary movement of natural persons) and mode 1 (cross-border supply) have been identified as areas of export interest to developing countries. Welfare gains from liberalizing the temporary movement of natural persons are estimated on the order of $150 billion to $250 billion and a substantial share of these gains would be realized from liberalization in the movement of low-skilled service suppliers. Remittances represent an important source of financial flows to developing countries. In 2003, total remittances amounted to more than twice the amount of the official development assistance, and their share in GDP in 2004 was high in low-income countries such as in Togo (31 per cent) and Lesotho (26 per cent). Temporary movements of service providers can increase welfare for both sending and receiving countries, and their beneficial effects spill over to the transfer of skills and technology, investments in education and skills development, and gender empowerment in sending countries.

43. Developing countries have called for commercially meaningful offers in mode 4, and a group of countries made multilateral requests on this mode consistent with the modal objectives of the negotiations set out in the Hong Kong Ministerial Declaration. They call for substantial improvements in the coverage of categories of movement, de-linked from commercial presence (contractual services suppliers and independent professionals); removal of market access limitations; improvements in commitments in national treatment; and enhanced transparency in each of these categories. Least developed countries have also made a request on mode 4 focusing on four categories of service suppliers, namely independent professionals, business visitors, contractual service suppliers, and others such as foreign personnel of carriers/vessels under a foreign flag and graduate trainees.

44. Liberalization in mode 4 has been particularly sensitive for both sending and receiving countries, and only limited offers have been made. For sending countries, concern exists over the possible loss of skilled service providers, especially in health care and education services. For receiving countries, a wide array of economic and social concerns — related to employment, wage parity, health and pension plan portability, illegal extension of stay and security — has induced the continued imposition of protective measures, resulting in limited commitments and offers. Policies at the national, bilateral, regional or multilateral levels are important to address such concerns. They could include policies to ensure temporariness, such as depositing bonds, garnishing remuneration, devising rotation schemes or other incentive-based mechanisms, and collaboration of sending and receiving countries to ensure return. Receiving countries could mitigate temporary brain drain by adopting ethical recruitment schemes. Consideration needs to be given to a rights-based approach to migration, focusing on economic rights in respect of remuneration, access to health care, education and social security and the rights of women.

45. The potential of migration (including temporary migration) for development has attracted increased international policy attention, as evidenced by the High-level Dialogue on International Migration and Development to be held at United Nations Headquarters in September 2006 (see A/60/864). The Global Migration Group, which includes UNCTAD, has brought specific contributions to the Dialogue, inter alia, in respect of trade and development aspects of migration.

46. Least developed countries have sought the effective implementation of the least developed country modalities adopted in 2003 and reaffirmed by the Hong Kong Ministerial Declaration. To that effect, they proposed a specific mechanism for ensuring that special priority be granted to them. Several developed countries expressed reservations on the proposal. The Quadrilateral Group of Industrialized Economies (Canada, the European Union, Japan and the United States) has proposed a specific mechanism to assess the granting of special priority to sectors and modes of supply of interest to least developed countries in the services offers of WTO members that are not least developed countries.

47. Universal access to essential services, particularly for the poor and marginalized segment of a society, is relevant to human and social development, as some services such as health, education, water and energy are essential to human survival and well-being. National policies on universal access involve complex trade-offs between promoting equitable and affordable access to basic health products and services and ensuring efficiencies in the health-care system. National

policies may be increasingly affected by international rules and liberalization commitments under the General Agreement on Trade in Services. Appropriate flexibility, consistent with the right to regulate recognized under the General Agreement, is important in allowing countries to implement various policies and regulations suited to their particular developmental objectives in a given national context.

48. Significant progress has been made in negotiations on domestic regulations. A consolidated working paper was issued by the Chairman of the Working Party on Domestic Regulations in July 2006. Many fundamental issues remain unresolved, including the applicability and/or definition of certain concepts like "technical standards" and "necessity test". Since multilateral disciplines on domestic regulations would affect developing countries' ability to implement development policies suited to their national context, striking the right balance between the right to regulate and achieving clear international disciplines is a major issue. For instance, several developing countries have expressed reservations on the application of a necessity test in the future disciplines, as it may constrain the flexibility available to them. The right to regulate as recognized under the General Agreement on Trade in Services, and flexibilities for developing countries, including through special and differential treatment, are becoming more important as focus is being given to those regulations promoting market access opportunities. Such flexibility could take the form of temporary exemptions from the application of the future disciplines, exemptions or temporary suspension of disciplines for measures taken with development objectives, or carve-out for least developed countries. These aspects are yet to be fully addressed.

49. Progress has been limited in negotiations on rules under the General Agreement on Trade in Services relating to emergency safeguard measures, subsidies and Government procurement. On emergency safeguard measures, the need for a viable safeguard mechanism in the services area has been highlighted mainly by developing countries. Regarding Government procurement, the European Commission has proposed an annex to the General Agreement on Trade in Services, drawing on provisions in existing regional trade agreements. The proposal suggests the possibility of making specific commitments in General Agreement on Trade in Services schedules to open Government procurement to international competition.

50. The suspension of the negotiations does not foreclose the improvement of services policies at the national level. There is a need to intensify efforts on comprehensive assessments of service sectors as an essential tool for undertaking requisite policy reform within national development strategy. Concomitantly, it is important to strengthen regulatory, institutional, and administrative frameworks and build regulatory capacity in developing countries. There is a need to capitalize on progress made to date in negotiations in market access offers and domestic regulations.

4. Development

51. As regards special and differential treatment and implementation issues, to which developing countries have attached particular importance, progress has been difficult. Despite intensive consultations held in pursuance of the Hong Kong Ministerial Declaration, the positions of countries on these issues remained largely

unchanged. The deadline of 31 July 2006 set by the Hong Kong Ministerial Declaration for implementation issues, was not met. No significant progress on either issue has been reported.

52. As regards duty-free quota-free market access for least developed countries, those countries are seeking effective implementation of the commitment in the form of 97 per cent tariff line coverage by 2008, with the fast-track inclusion, in a commercially meaningful manner, of the products of their export interest, and moving expeditiously towards 100 per cent coverage. Least developed countries have thus called for duty-free quota-free treatment to be provided in those tariff lines in which positive duties are still applied to their exports and for follow-up discussions on the list of products excluded from the coverage, the time frame and implementation plans. The explicit mention of timing is significant, as some countries consider that duty-free quota-free market access is conditional upon the conclusion of the overall Doha Round. Product coverage remains important, as the remaining 3 per cent of tariff lines could exclude some 330 tariff lines, whereas, for example, an exclusion of 20 to 25 tariff lines would account for some two thirds of the total exports of Bangladesh. A study by the WTO secretariat finds that several countries have yet to achieve the target of 97 per cent coverage, including Japan (85.5 per cent), Norway (96.4 per cent), Switzerland (86.2 per cent) and the United States (81.8 per cent). As regards the commitment to ensure that applicable rules of origin are "transparent and simple", least developed countries have proposed common and simple rules of origin applicable to their exports.

53. With respect to Aid for Trade, the Sixth Ministerial Conference agreed to the principle that Aid for Trade is required to help developing countries benefit from trade and trade negotiations. Accordingly, a task force was established and examined various aspects of operationalizing Aid for Trade (see para. 54 below). UNCTAD has contributed to this process, including by organizing a meeting jointly with the Commonwealth Secretariat. UNCTAD expertise in trade-related capacity-building programmes for developing countries and countries with economies in transition could contribute to the Aid for Trade initiatives. The 2006 G-8 summit in St. Petersburg expected spending on Aid for Trade to increase to $4 billion, including through enhancing the integrated framework. The task force released its report in July 2006 and provided a set of recommendations for the operationalization of Aid for Trade in respect of financing, scope, objectives, guiding principles, countries' needs to be addressed and monitoring and evaluation. Aid for Trade is central to but also beyond the Doha negotiations — it is about enabling developing countries to improve their trading capacities, adjust to changing rules and trade patterns, and enhance their participation in global trade and realize concrete gains. Such aid must thus be additional to current development assistance and be secure, predictable and non-debt creating.

54. The task force on Aid for Trade recommended that projects and programmes for Aid for Trade should be considered if they were identified as trade-related development priorities in the recipient country's national development strategies. Those priorities should be mirrored by donor and agency support and resource allocation for Aid for Trade. As a next step, it recommended that WTO members expeditiously implement its recommendations and request the Director-General of WTO to communicate its recommendations to relevant agencies and to urge Ministers at the forthcoming Development Committee meeting in Singapore to give consideration to the recommendations and encourage the World Bank and IMF to

ensure adequate follow-up; establish an ad hoc consultative group to take forward the practical follow-up to the recommendations; and convene an initial review of Aid for Trade with the participation of all relevant stakeholders. The task force stated that Aid for Trade could be delivered through existing mechanisms like the enhanced integrated framework for least developed countries and similar nationally oriented development frameworks for other developing countries. Some Aid for Trade will continue to be delivered multilaterally, for which support could be provided by United Nations agencies.

5. Trade-related aspects of intellectual property rights

55. On 29 November 2005, a decision was taken to grant least developed countries an additional seven and a half years for the implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). A General Council decision taken in August 2003 had temporarily waived two obligations under the Agreement related to public health (article 31 (f) and (h)) to facilitate access to essential medicines for countries with no or limited manufacturing capacities. Subsequently, WTO members agreed on 6 December 2005 on an amendment of the Agreement that will enter into force once accepted by two thirds of the members, with a target date of 1 December 2007. Until then, the waiver will remain in force. To date, no use has been made of the waiver.

56. Two issues related to traditional knowledge — access and benefit-sharing for genetic resources, and the protection of traditional knowledge and folklore — have been stressed by developing countries. They have expressed concern that the current intellectual property protection system, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, fails to adequately safeguard traditional knowledge and genetic resources. Consequently, countries rich in biological diversity and holders of traditional knowledge argue that the illegitimate commercialization of their resources, knowledge and traditions is happening without their prior informed consent and without the fair sharing of any resulting benefits. Solutions are being pursued at various levels. At the national level, access and benefit-sharing regimes, recognition of customary laws and practices and the creation of traditional knowledge databases could help to preserve traditional knowledge as a living body of knowledge in diverse communities. At the international level, a key proposal is to require the disclosure of the origin of genetic resources and associated traditional knowledge in relevant patent applications. Such a requirement could also include evidence of prior informed consent and benefit-sharing. These issues are being discussed in various international forums, including negotiations on an amendment to the Agreement, and through dedicated working groups and committees under the Convention on Biological Diversity and the World Intellectual Property Organization.

57. No agreement has been reached on negotiations on geographical indications relating to the establishment of a multilateral register of geographical indications for wines and spirits, and the extension of additional protection to products other than wines and spirits that is also discussed in the agricultural context.

6. Other issues

58. An "early harvest" was achieved in June 2006 on a transparency mechanism for regional trade agreements. The mechanism introduces procedural rules regarding early announcement, notification, enhanced transparency, subsequent notification and reporting of regional trade agreements. It streamlines the review process especially by requiring that the review be completed within one year following notification, that a single formal meeting be devoted to consider each notified agreement, and that any additional exchange of information should take place in written form. The mechanism also introduces factual presentation by the WTO secretariat in the examination process and technical support to developing countries. This is important in ensuring compatibility and coherence of regional trade agreements with the multilateral trading system. The mechanism applies to agreements under article XXIV of the General Agreement on Tariffs and Trade and article V of the General Agreement on Trade in Services, which would be reviewed by the Committee on Regional Trade Agreements, and Enabling Clause agreements, which would be reviewed by the Committee on Trade and Development. The mechanism would be implemented on a provisional basis. Little progress was made on systemic issues, including the definition of terms like "substantially all the trade", "transitional periods" and special and differential treatment.

59. Negotiations on trade facilitation progressed relatively smoothly. A full draft text was expected in July 2006 but did not materialize. Many WTO members recognize the benefits of trade facilitation, and many developing countries, particularly landlocked countries, have shown strong interest in the negotiations. Developing countries generally emphasized the need to create synergy between the timing and degree of commitments, implementation capacity and the provision of capacity-building support and investment for developing countries as provided in the negotiating modalities, and have provided new "modular approach" proposals in this regard.

60. Negotiations on trade and environment, especially environmental goods and services, continue the search for a common ground, particularly on an approach that would reconcile the various environmental, developmental and trade interests in the broader context of sustainable development.

61. The number of cases initiated under the WTO dispute settlement mechanism decreased from 19 in 2004 to 11 in 2005. In 2006, 13 cases had been initiated by August. In 2005, developing countries accounted for 64 per cent of both complainants and respondents. The recent rulings have made some important findings regarding, inter alia, the jurisdiction of dispute settlement mechanisms under WTO and regional trade agreements, national treatment and the relationship between the protection of geographical indications and prior trademarks under the Agreement on Trade-Related Aspects of Intellectual Property Rights, and procedures for terminating pre-authorized trade sanctions. Some ongoing cases address the interface between trade liberalization and public policy objectives (public health and environment) or certain anti-dumping practices.

62. The Hong Kong Ministerial Declaration welcomed the accession of Saudi Arabia and noted the completion of accession negotiations of Tonga which was granted a one-year extension to ratify its accession. Recent accessions have resulted in major liberalization commitments. Some 30 countries are in the queue for WTO

accession. Acceding developing countries continue to face requests for deeper and more stringent commitments, including "WTO-plus" commitments, with their access to special and differential treatment provisions subjected to negotiations on a case-by-case basis.

V. Regional trade agreements and South-South Cooperation

63. The proliferation, expansion and consolidation of regional trade agreements show no sign of abatement, and major trade liberalization is taking place regionally. Consequently, some 50 per cent of world trade takes place within regional trade agreements. As at January 2005, a total of 312 had been notified to WTO, and 170 are currently in force. The United States has intensified bilateral initiatives, with negotiations launched or concluded with Panama, Central America, Peru, Colombia and Ecuador; Bahrain, Oman and Morocco; the Southern African Customs Union; and the Republic of Korea. The European Union has pursued negotiations with Mercosur, the Cooperation Council for the Arab States of the Gulf and the Syrian Arab Republic, and six Arab, Caribbean and Pacific regions for economic partnership agreements. Interest is resurging in North-North regional trade agreements such as the United States-Australia free trade agreement.

64. South-South trade cooperation and integration is deepening. Existing agreements are being expanded to partners within and outside the region, as in the Mercosur-Andean Community free trade agreement, the Bangladesh-India-Myanmar-Sri Lanka-Thailand Economic Cooperation Initiative and the South Asian Free Trade Area. Ten ASEAN countries have bilateral free trade agreements among themselves, and individual bilateral agreements with China, the Republic of Korea and India. The third round of the Global System of Trade Preferences negotiations, under way since 2004, aims at expanding South-South cooperation through the exchange of concessions. Work has been undertaken on guidelines, including the possibility of sectoral negotiations and deeper tariff cuts, as appropriate, on a line-by-line basis, techniques and modalities in negotiations, strengthening rules of origin, lists of priority exports, and special and differential treatment for least developed countries.

65. Notwithstanding the potential of regional trade agreements, their proliferation poses challenges for the trading system. All WTO members with the exception of one (Mongolia) are members of at least one regional trade agreement, and many are parties to two or more and are negotiating additional ones. North-South agreements are transforming pre-existing unilateral preferences into reciprocal preferences, and thus require developing countries to open up their own markets and often to undertake commitments on regulatory issues such as intellectual property, investment or competition policy ("WTO-plus"). By enabling faster and deeper integration and liberalization, new-generation regional trade agreements may reduce incentives for a multilateral approach, and could represent a systemic risk to the multilateral trading system. There is thus a need to ensure positive coherence and interface between the two processes.

VI. Conclusions

66. The recent suspension of the negotiations indicates that the Doha Round, and the multilateral trading system, have reached a critical phase, and confidence-building, political decisions and compromises, especially by major players, are needed to unlock the stalemate, particularly on agriculture, and move the process forward towards a timely conclusion. The relevance and importance of WTO as a central pillar of the international trading system is not undermined. Positive coherence between the multilateral trading system and regional trade agreements, including through the improved transparency mechanism, is important. There is also a need to ensure coherence between the trade negotiation outcomes and the implementation of the Millennium Development Goals. The suspension has led to uncertainty over the negotiating prospects, casting a shadow over world trade and the multilateral trading system. It is thus imperative that efforts be devoted to resuming negotiations at the earliest possible date, so that the development promises of Doha can be fully delivered, placing the needs and interests of developing countries at the heart of the negotiations and incorporating them in a balanced and development-oriented outcome, including in terms of:

- Enhanced and predictable market access and entry opportunities for developing country exports
- Improved support aimed at building trade-related infrastructure and competitive supply capacity, including in services through effective and operational Aid for Trade among other means
- Effective and operational special and differential treatment
- Elimination of all forms of export subsidies by 2013 on a front-loaded basis, and substantial reductions in trade-distorting domestic support in agriculture
- Addressing preference erosion and enhancing utilization of trade preferences
- Full provision of duty-free quota-free market access for the least developed countries.